

CHAPTER NO. 794

HOUSE BILL NO. 2570

By Representatives Buck, Sands, Boyer

Substituted for: Senate Bill No. 2413

By Senator Haynes

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 21, Part 9; Title 8, Chapter 8 and Title 16, Chapter 15, Part 9, relative to service of process.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-21-901, is amended by deleting the section in its entirety and substituting instead the following:

(a) Notwithstanding any other provision of law to the contrary, the sheriff or constable is entitled to demand and receive the respective fees for the following services where services are actually rendered:

(1) Service of Process

(A) For serving any process except as otherwise provided in this section or other applicable law, whether issued by a clerk for a general sessions, criminal, circuit, chancery or any other court, the sheriff or constable shall be entitled to the following fees, based on the manner in which process is served, for each item of process that must be served separately per person served:

(i) For service in person \$20.00

(ii) For service by mail \$10.00

(iii) For service by acceptance or consent or any other
authorized
Method \$10.00

(B) For summoning jurors in any proceeding
\$5.00

(C) For serving or delivering any other process or notice not
related to a judicial proceeding and issued by an entity other than a
court \$10.00

(D) For returning any service of process where the sheriff or
constable attempts service but is unsuccessful, the sheriff or constable
shall only be entitled to a fee of seven dollars (\$7.00).

(2) Collection of money; returning, transporting, storing or establishing possession of property.

(A) For a levy of an execution on property or levy of an attachment or other process to seize property for the purpose of securing satisfaction of a judgment yet to be rendered or for executing a writ of replevin or writ of possession \$40.00

(B)(1) For collecting money to satisfy a judgment, whether by execution, fieri facias, garnishment or other process, in civil cases each time collection is attempted. \$20.00

(2) For purposes of the payment of fees for garnishments as provided in this subdivision, all garnishments shall be deemed to be original garnishments and the sheriff or other person authorized by law to serve garnishments shall be entitled to the fee provided for in this subdivision for each such garnishment served.

(C) Whenever the sheriff or constable provides for the storage or maintenance of property including, but not limited to, vehicles, livestock and farm and construction equipment, that has been levied on by execution, attachment or other process, the sheriff or constable is entitled to demand and receive a reasonable per day fee for such services. The sheriff or constable is also entitled to demand and receive reimbursement for costs of transportation of such personal property to a suitable location for storage and maintenance when such action is necessary to secure such property. Any such fees for transportation, maintenance and/or storage shall be approved by the court issuing the execution, attachment or other process.

(3) Arrest and transportation of prisoners, bail bond.

(A) For executing every capias, criminal warrant, summons or other leading process, making arrest in criminal cases and carrying to jail, prison or other place of incarceration and guarding defendant arrested by warrant involving taking custody of a defendant \$40.00

(B) For citation in lieu of arrest or criminal warrant not involving physical custody of defendant \$25.00

(C) For every bail bond \$5.00

(D) If a sheriff or constable is required to act as a guard to escort prisoners, such sheriff shall be entitled to a per mile fee equal to the mileage allowance granted federal employees. Such fee shall be separate for each prisoner and computed on the distance actually traveled with the prisoner and shall be for no more than two (2) guards. Such fee shall only apply when the sheriff or constable is required to transport a prisoner from county to county or from state to state. Similarly, the sheriff shall be entitled to the same mileage allowance when required

to transport a prisoner to a hospital or other mental health facility in another county or state for a judicially ordered evaluation.

(E) When two (2) or more criminal warrants are executed at the same time against the same individual, there shall be but one (1) arrest fee allowed when the fee is chargeable to the county and/or the state.

(4) Security Services

(A) For attending on grand jury, or waiting in court, per day
\$75.00

(B) For waiting with a sequestered jury, per day
\$100.00

(5) Data processing services

(A) For data processing services \$2.00

(B) The revenue from the two dollar (\$2.00) data processing fee levied by subdivision (A) above, shall be allocated by the sheriff's county for computerization, information systems and electronic records management costs of the sheriff's office. Such funds shall remain earmarked within the general fund and shall be reserved for the purposes authorized in this subdivision at the end of each fiscal year.

(b) Notwithstanding other provisions of this section to the contrary, any fee or mileage allowance permitted under this section, which is assessed against the state or which otherwise represents a cost to the state, shall be limited in amount to the fees allowable immediately prior to May 28, 1977.

(c) The court in its discretion may award as any part of any judgment rendered in a case recovery of fees for process served by any private process server but such fees awarded against a party shall not exceed the like fees as authorized by this section for services provided by sheriffs or constables.

SECTION 2. Tennessee Code Annotated, Title 16, Chapter 15, Part 9, is amended by deleting Sections 16-15-901, 16-15-902, 16-15-903, 16-15-904 and 16-15-905 in their entirety and by substituting instead the following:

Section 16-15-901.

(a) Upon filing of civil warrants, writs and other papers the clerk of the general sessions court wherein such civil warrants, writs or other papers are filed, shall issue the required process, writs or other papers, and cause it, with necessary copies of the civil warrant, writ or papers, to be delivered for service to such person authorized to serve process as may be designated by the party filing such civil warrant, writ or other papers or such party's attorney if represented by counsel. Such authorized person shall serve the civil warrant, writ or other papers, and the return endorsed thereon shall be proof of the time and manner of service. A civil warrant, writ or other papers may be issued for service in any county against any defendant, or additional defendants.

(b) A civil warrant, attachment or any other leading process used to initiate an action in general sessions court and subpoenas or summons may be served by any person designated by the party, or the party's attorney, if represented by counsel, who is not a party to the action and is not less than eighteen (18) years of age. Service of other process and orders of the courts of this state shall be by sheriffs, constables or as provided by law. The process server must be identified by name and address on the return.

(c) Nothing in this section shall affect existing laws with respect to venue.

Section 16-15-902. Return.

(a) Any person serving the process from the general sessions court shall promptly and within the time during which the person is served must respond, make proof thereof to the court and shall identify the person served and shall describe the manner of service.

(b) Process shall be served within the time required by law.

(c) When process is served by mail, the original warrant, writ or other papers, endorsed by manner of service; in addition an affidavit of the person making service setting forth the personal compliance of this section; and the return receipt shall be sent to and filed with the clerk of the court. The person making service in this manner shall endorse over his or her signature on the original warrant, writ or other papers the date of mailing a certified copy of the warrant, writ or other papers to the defendant and the date of receipt of return receipt from the defendant. If the return receipt is signed by the defendant, or any person designated by this section of this title or by statute, service on the defendant is complete. If not, service by mail may be attempted or any other methods authorized by this section of this title or by statute may be used.

Section 16-15-903. Service upon defendants in this state. The plaintiff shall after issuance by the clerk of the general sessions court furnish the persons making the service with all necessary copies. Service shall be made as follows:

(a) Upon an individual other than an unmarried infant incompetent person, by delivering a copy of the warrant, writ or other papers to the individual personally, or if he or she evades or attempted to evade service, by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, whose name shall appear on the proof of service, or by delivering the copies to an agent authorized by appointment or by law to receive service on behalf of the individual served.

(b) Upon an unmarried infant or an incompetent person, by delivering a copy of the warrant, writ or other papers to the person's residence guardian or conservator if there is one known to the plaintiff, by delivering the copies to the individual's parent having custody within this state; or if no such parent is within this state, then by delivering the copies to the person within this state having control of the individual. If none of the persons defined and enumerated above exists, the court shall appoint a practicing attorney as guardian ad litem to whom the copies shall be delivered. If any of the persons directed by this paragraph to be served is a plaintiff, then the person who is

not a plaintiff who stands next in the order named above shall be served. In addition to the service provided in this paragraph, service shall also be made on an unmarried minor who is fourteen (14) years of age or more, and who is not otherwise incompetent.

(c) Upon a partnership or unincorporated association (including a limited liability company) which is named defendant under a common name, by delivering a copy of the warrant, writ or other papers to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(d) Upon a domestic corporation, or a foreign corporation doing business in this state, by delivering a copy of the warrant, writ or other papers to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive serve on behalf of the corporation.

(e) Upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in a county other than the county in which the resident individual resides, in any action growing out of or connected with the business of that office or agency, by delivering a copy of the warrant, writ or other papers to the person in charge of the office or agency.

(f) Upon the state of Tennessee or any agency thereof, by delivering a copy of the warrant, writ or other papers to the attorney general of the state or to any assistant attorney general.

(g) Upon a county, by delivering a copy of the warrant, writ or other papers to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the county court clerk.

(h) Upon a municipality, by delivering a copy of the warrant, writ or other papers to the chief executive officer, or to the city attorney.

(i) Upon any governmental or any quasi-government entity, by delivering a copy of the warrant, writ other papers to any officer or managing agent thereof.

(j) Service by mail of a warrant, writ or other papers upon a defendant may be made by the plaintiff, the plaintiff's attorney or by any person authorized by statute. After the complaint, warrant, writ or other papers are filed, the clerk shall, upon request, furnish the original warrant, writ or other papers, a certified copy thereof and a copy of the filed warrant, writ or other papers to the plaintiff, the plaintiff's attorney or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the warrant, writ or other papers by registered return receipt or certified return receipt mail to the defendant. The original warrant, writ or other papers shall be used for return of service of process. Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by the section of this title or statute. If service by mail is unsuccessful, it may be attempted again or other methods authorized by these sections of this title or by statute may be used.

Section 16-15-904. Service upon defendants outside of state:

(a) Whenever the law of this state authorizes service outside this state, such service, when reasonably calculated to give notice, may be made:

(1) by any form of service authorized for service within this state pursuant to this act.

(2) In any manner prescribed by the law of the state in which service is effected for an action in any of the courts of general jurisdiction in that state;

(3) as directed by the court.

The provisions of this section of this title are inapplicable when service is effected in a place not within any judicial district of the United States.

(b) Service of process pursuant to this section of this title shall include a copy of the warrant, writ or other papers.

(c) Service by mail upon a corporation shall be addressed to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.

(d) Service by mail upon a partnership or unincorporated association (included a limited liability company) that is named defendant upon a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(e) When service of warrant, writ or other papers, is provided for or permitted by registered or certified mail, under the laws of Tennessee, and the addressee, or the addressee's agent, refused to accept delivery, and it is so stated in the return receipt of the United States Postal Service, the written return receipt, if returned and filed in the action, shall be deemed an actual and valid service of the warrant, writ or other papers. Service by mail is complete upon mailing. For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the defendant's refusal to accept delivery.

Section 16-15-905. Constructive Service. In cases where constructive service of process is permissible under the statutes of this state, such service shall be made in the manner prescribed by those statutes, unless otherwise expressly provided in these rules.

SECTION 3. This law shall take effect on July 1, 2002, the public welfare requiring it.

PASSED: May 22, 2002



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 29th day of May 2002



DON SUNDQUIST, GOVERNOR